

SB-551-SD-1

Submitted on: 2/17/2019 9:22:10 AM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Testifying for Palehua Townhouse Association	Support	No

Comments:

Our association supports SB551.

Mike Golojuch, Sr., President, Palehua Townhouse Association

SB-551-SD-1

Submitted on: 2/17/2019 5:19:45 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I very strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law. The ability of condominium associations to utilize nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures because of the need to prepare complaints and motions, make court appearances, prepare orders and judgments, pay commissioner's fees and costs, and pay court filing fees. Nonjudicial or power of sale foreclosures are much faster and less expensive.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Mark McKellar

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

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Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)
President for Kulana Knolls Assn.

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law. The ability of condominium associations to utilize nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations, which consist of its members (owners) and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures because of the need to prepare complaints and motions, make court appearances, prepare orders and judgments, pay commissioner's fees and costs, and pay court filing fees. Nonjudicial or power of sale foreclosure is much faster and less expensive way of collecting the money that actually belongs to the other owners of the Association.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Barbara A. Kojima
President, Association of Apartment Owners of
Kihei Bay Surf

and;

General Manager
The Maui Lani Community Association

SB-551-SD-1

Submitted on: 2/16/2019 12:50:48 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Oppose	No

Comments:

I am against this measure, as it wrongfully extends condo management the opportunity to profit prematurely from the misfortunes of owners, including a good number of senior owners who have been diligent about paying their dues, but find themselves in difficult straits. Every owner deserves the right to agreements which help them to keep their properties and to restore their dues payment records.

In many instances of these foreclosures, units have been sold for pennies on the dollar, yielding enormous profits to those undeserving of them, and who had no part in the years of the owners' dedication and pride in maintaining their properties.

Call a spade a spade. Isn't the relentless quest and greed for the almighty dollar still at the heart of these unjust efforts by the industry? ***Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap. - Galatians 6:9*** The truth is, we reap MORE than we sow, good or bad!!

SB-551-SD-1

Submitted on: 2/16/2019 3:28:03 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law. The ability of condominium associations to utilize nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures because of the need to prepare complaints and motions, make court appearances, prepare orders and judgments, pay commissioner's fees and costs, and pay court filing fees. Nonjudicial or power of sale foreclosures are much faster and less expensive.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

M. Anne Anderson

SB-551-SD-1

Submitted on: 2/16/2019 3:34:35 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly **SUPPORT** the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law. The ability of condominium associations to utilize nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures because of the need to prepare complaints and motions, make court appearances, prepare orders and judgments, pay commissioner's fees and costs, and pay court filing fees. Nonjudicial or power of sale foreclosures are much faster and less expensive.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Paul A. Ireland Koftinow

SB-551-SD-1

Submitted on: 2/16/2019 11:21:41 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Glanstein	Individual	Support	No

Comments:

I support S.B. 551 SD1. Condominium associations in Hawai'i have relied upon legislation authorizing non-judicial foreclosures for years.

Non-defaulting owners bear extra costs of judicial foreclosures, especially if there is a deficiency or extended foreclosure process.

The legislature wisely enacted the non-judicial foreclosure process which reduced costs to the non-defaulting owners and in many cases, resulted in owners who would pay the common assessments.

A recent court ruling in Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch, 143 Hawai'i 426 P.3d 443 (Haw. Ct. App. 2018) created an unfair and onerous burden to our Hawai'i condominium associations notwithstanding the obvious plain language in HRS §514B-146.

S.B. 551 SD1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures. Please pass S.B. 551 SD1.

SB-551-SD-1

Submitted on: 2/17/2019 6:23:32 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dante K. Carpenter	Individual	Support	Yes

Comments:

Chair Sen. Rhoads, VC Sen. Wakai, & Committee Members:

My name is Dante Carpenter. As President of Country Club Village, Phase 2, AOA Condominium Owners (469 Units), I speak in favor of the SB 551, SD 1. I understand that the Hawaii Intermediate Court of Appeals has held that provisions in the Condominium Property Act states that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

SB 551, SD 1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law! Condominiums ability to use nonjudicial or power of sale foreclosures to collect unpaid common expense assessments is beneficial to both associations as well as delinquent owners. Because the Judicial Foreclosure process takes longer to complete, the amount owed by the delinquent owner would continue to grow. Concurrently, the attorney's fees and costs incurred by the associations in judicial foreclosures will increase due to the need to prepare complaints and motions, make court appearances, prepare orders and judgements, pay commissioners's fees and costs, as well as court filing fees! Therefore, Nonjudicial or power of sale foreclosures are faster and cheaper!

Due to the recent decision by the Intermediate Court of Appeals, this legislation is necessary to affirm as well as clarify the ability of condominium associations to conduct Nonjudicial Foreclosures. The CCV, Phase 2, Association fo Apartment Owners supports this measure!

Respectfully Submitted, Dante Carpenter President

TESTIMONY IN FAVOR OF SB 551 SD1.

Chair Rhoads and Members of the Committee:

My name is John Morris and I urge you to pass SB 551 SD1. The bill confirms that the recent decision of the Intermediate Court of Appeals ("ICA") in Sakal v. Association of Apartment Owners of Hawaiian Monarch, 143 Hawai'i 219, 426 P.3d 443 (2018) MISinterpreted the legislative intent in allowing associations to conduct nonjudicial foreclosures.

The ICA in Sakal incorrectly concludes that the legislature only intended to allow associations to conduct nonjudicial foreclosures if the associations' declaration or bylaws specifically permit the association to do so. In doing so, the Sakal decision undermines the efforts of the legislature since 1999 to give associations an effective foreclosure remedy against delinquent owners. Essentially, the ICA held that the right of an association to conduct nonjudicial foreclosures depended not on the intent of the legislature but on the actions of a long-ago developer's attorney, when he drafted the association's governing documents!

1. **This bill is not "retroactive legislation."** Instead, it merely seeks to re-affirm the legislative intent that was expressed in 1999, almost 20 years ago. At that time, the legislature recognized that, after years of losses from delinquencies, nonjudicial foreclosure helped associations make the best of a bad situation.

During the 1990's, the courts were clogged with judicial foreclosures, so lender judicial foreclosures were taking 12 to 18 months, sometimes longer (which, in turn, meant that it often took 18 months to 2 years before a new paying owner took possession of the apartment and actually began paying association maintenance fees). Hawaii's "first in time, first in right" foreclosure law also meant that if associations foreclosed judicially, they spent just as much time and money as a lender for a more questionable result.

More specifically, the "first in time . . ." principle meant that if the association foreclosed, it could do nothing to affect the lender's first mortgage lien and would have to sell the property subject to the mortgage – i.e., the mortgage would remain as a lien on the property after the association's foreclosure sale. Falling property values often put the association in the position of, for example, trying to auction a property worth \$400,000 that remained subject to a mortgage of \$500,000. Since the mortgage would remain on the property despite the association's foreclosure sale, there were often very few buyers.

Despite these disadvantages, associations could sometimes foreclose, buy the property at the auction, and rent out the property while the lender conducted its own collection

efforts. Since nonjudicial foreclosures typically were one third the cost and took one third the time of a judicial foreclosure, the right to conduct a nonjudicial foreclosures provided a significant benefit to an association. The nonjudicial process also allowed the association to put cost-effective pressure on a delinquent owner to pay, which is the main purpose of the nonjudicial foreclosure process in the first place.

2. This bill balances the interests of the delinquent owner and the paying owners. Some people characterize nonjudicial foreclosures as unfair to delinquent owners while forgetting the adverse impact of those delinquencies on the owners who are paying their maintenance fees. The Hawaii legislature recognized in 1999 that prolonging the collection process against delinquent owners severely impacted an association's financial viability and that of its members. While many people often focus on the owner being foreclosed, they lose sight of the fact that if one owner is not paying, all of the other owners have to make up the difference, so the association can continue to function. If too many owners stop paying, the increase in maintenance fees to cover their delinquencies can start overwhelming the ability of the remaining owners to pay, leading to financial problems for the association and those owners.

In recognition of the need to balance the interests of the delinquent owners with the non-delinquent owners, in 2012, the legislature amended Hawaii's foreclosure law to establish a new nonjudicial foreclosure process – “part VI” – solely for condominiums and other types of homeowner associations. In doing so, the legislature did not ignore the difficulties faced by delinquent owners.

Instead, as part of the changes made in 2012, the legislature:

- Prohibit associations from nonjudicially foreclosing only to collect fines, penalties, legal fees, or late fees.
- Require that, after starting a nonjudicial foreclosure, the association must give the owner sixty (60) days to cure the default before proceeding with the nonjudicial foreclosure. Under part VI, the notice of intent to begin the nonjudicial foreclosure must also include contact information for owners about approved housing counselors and approved budget and credit counselors
- Require associations to accept a “reasonable payment plan” – defined as a payment plan that can last up to twelve (12) months – from the owner.

In summary, SB 551 SD1 recognizes that, beginning in 1999, the legislature carefully and consciously gave associations the right to conduct nonjudicial foreclosures even if they did not have specific authority in the declaration and bylaws or a separate agreement with an owner. The legislature also balanced the right of associations to conduct nonjudicial foreclosures by imposing specific limitations to protect the rights of

delinquent owners.

The legislature's intent should be recognized and re-affirmed. For those reasons, I strongly support SB 551 SD1.

This committee should, however, consider the wording of HB 76 HD1, which confirms for not just condominiums but other types of homeowner associations the right to conduct nonjudicial foreclosures. HB 76 HD1 also amends the definition of "power of sale foreclosure" (i.e., nonjudicial foreclosure) in section 667-1 -- the definition that was the source of the misinterpretation by the ICA in Sakal. Those additional provisions would make SB 551 SD1 a more comprehensive bill.

John Morris

SB-551-SD-1

Submitted on: 2/19/2019 7:40:05 AM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn S. Horio	Testifying for Anderson Lahne & Fujisaki	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and always have been, empowered to conduct nonjudicial or power of sale foreclosures as a matter of law. The ability of condominium associations to utilize nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures because of the need to prepare complaints and motions, make court appearances, prepare orders and judgments, pay commissioner's fees and costs, and pay court filing fees. Nonjudicial or power of sale foreclosures are much faster and less expensive.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial foreclosures. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Glenn S. Horio

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

S.B. 551, S.D.1 clarifies that condominium associations are, and have been for years, authorized to conduct nonjudicial or power of sale foreclosures. The ability of condominium associations to use nonjudicial or power of sale foreclosures to collect unpaid common expense assessments benefits both associations and delinquent owners. Judicial foreclosures take much longer to complete, during which time the amount owed by the delinquent owner continues to grow. Also, the attorneys' fees and costs incurred by associations in judicial foreclosures are higher than in nonjudicial or power of sale foreclosures. Nonjudicial or power of sale foreclosures are much faster and less expensive and the nonjudicial foreclosure statute (Part VI, Chapter 667, Hawaii Revised Statutes) protects the rights of the delinquent owner.

Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial foreclosures. For this reason and the reasons stated above, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Pamela J. Schell

SB-551-SD-1

Submitted on: 2/19/2019 9:33:29 AM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lance S. Fujisaki	Individual	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

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Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Lance S. Fujisaki

SB-551-SD-1

Submitted on: 2/19/2019 11:06:22 AM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip L. Lahne	Individual	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

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Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Philip L. Lahne

SB-551-SD-1

Submitted on: 2/19/2019 2:54:24 PM

Testimony for JDC on 2/20/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna L. Miranda	Individual	Support	No

Comments:

RE: S.B. 551, S.D.1

Dear Senator Rhoads, Chair, Senator Wakai, Vice Chair, and Members of the Committee:

I strongly support the passage of S.B. 551, S.D.1. In *Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch*, 143 Hawai'i 219, 426 P.3d 443 (App. 2018), the Hawai'i Intermediate Court of Appeals held that the provisions in the Condominium Property Act stating that "the lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures" does not empower associations to conduct nonjudicial or power of sale foreclosures unless nonjudicial or power of sale foreclosure provisions are contained in the association's project documents.

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Given the recent decision by the ICA, this legislation is needed to affirm and clarify the ability of condominium associations to conduct nonjudicial. For this reason and the reasons stated herein, I strongly support S.B. 551, S.D.1.

Respectfully submitted,

Joanna L. Miranda